IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 1079 of 2007()

CMP.2/2006 of SUB DIVISIONAL MAGISTRATE, TIRUR

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REVN. PETITIONER:

PUTHUPARAMBIL MOHAMMED, AGED 69,
S/O.MARAKKAR, THOZHUVANNOOR AMSOM DESOM,
P.O.THOZHUVANNOOR, VALANCHERY.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. NELLIKKAL KOYAKUTTY, S/O.KUNHALAVI,
THOZHUVANNOOR P.O., VALANCHERRY.

BY ADV. SRI.K.P.MUJEEB
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1079 OF 2007 D

Dated this the 29th day of October, 2007

O R D E R

Heard both sides.

2. The revision petitioner challenges the final order dated 20.2.2007 passed by the Sub Divisional Magistrate, Tirur making absolute the conditional order passed under section 133 Cr.P.C. in respect of three coconut trees standing in the property of the revision petitioner and alleged to be leaning dangerously towards the residential house and the latrine of the 2nd respondent.

3. I perused the files also. In the complaint preferred by the 2nd respondent before the Revenue Divisional Officer, his grievance was that the revision petitioner was not co-operating with the repeated requests made by him to cut the cadjan leaves and tie the three coconut trees using iron ropes even at the expense of the complainant. However, the conditional order passed on 10.3.2006 was to cut and remove the aforementioned trees within ten days or to appear and show cause on 4.4.06. It is thereafter that the present order has been passed merely relying on the report of the Village Officer, Kattipparuthy. The main reason for passing the final order is the failure on the part of the revision petitioner in filing objections. According to the revision petitioner, he could not file objections since he was not supplied with a

copy of the complaint. The complaint is only less than a page and it is an unreasonable stand by the revision petitioner to continuously ask for time before the Sub Divisional Magistrate. But the failure on the part of the revision petitioner to file his objections could not absolve the Sub Divisional Magistrate from passing a final order in accordance with law. The 2nd respondent was bound to adduce evidence in support of his contention and it was only on being convinced that the trees in question could not be tied using ropes and that the extreme step of cutting the trees was inevitable, could the Sub Divisional Magistrate pass a final order for cutting the trees. The impugned order is accordingly set aside and the matter is remitted to the Sub Divisional Magistrate, Tirur before whom both parties shall appear without any further notice on 19.11.2007. On that day, the revision petitioner shall have filed his objections to the complaint. Thereafter, the Sub Divisional Magistrate shall conduct an enquiry and pass appropriate final orders in accordance with law. The extreme step of cutting the trees shall be passed only if tyeing the trees at the expense of the revision petitioner is found not feasible.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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